

Authorised Version No. 003
Victorian Planning Authority Act 2017

No. 11 of 2017

Authorised Version incorporating amendments as at
30 May 2018

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	1
3 Definitions	1
Part 2—Victorian Planning Authority	6
Division 1—Establishment, functions and powers	6
4 Establishment	6
5 Official seal	6
6 Authority represents the Crown	6
7 Objects	7
8 Functions	7
9 Powers	8
10 Performance of functions and exercise of powers in accordance with planning and Government economic and social objectives	9
10A Obligations of Authority in relation to Yarra River land	10
10B Obligations of Authority in relation to declared areas	11
Division 2—Board of the Victorian Planning Authority	12
11 Board of directors	12
12 Constitution of the board	12
13 Appointment of directors	12
14 Chairperson and deputy chairperson	13
15 Acting appointments	13
16 Vacancies, resignations, removal from office	15
17 Validity of acts or decisions	16
18 Proceedings of the board	17
19 Resolutions without meetings	18
20 Indemnity	18

<i>Section</i>	<i>Page</i>
Division 3—Chief executive officer and staff of the Authority	19
21 Appointment of chief executive officer	19
22 Appointment of acting chief executive officer	20
23 Employees and other staff	20
24 Consultants and contractors	21
Division 4—Conflicts of interest	21
Subdivision 1—Interpretation	21
25 Definitions	21
26 Meaning of <i>general conflict of interest</i>	22
27 Meaning of <i>specific conflict of interest</i>	22
28 Circumstances in which a person does not have a conflict of interest	24
Subdivision 2—Managing conflicts of interest	25
29 Board meetings	25
30 Board resolutions without meetings	26
31 Delegates and agents	28
32 Advisors	30
Division 5—Miscellaneous	30
33 Power to request information or assistance	30
34 Duty to consult	31
35 Duty to establish systems and procedures to enable cooperation with Councils and other public sector bodies	32
36 Minister may give directions to Authority	32
37 Designated areas	32
38 Committees	32
39 Payment of certain members of committees	33
40 Delegation by the Authority or chief executive officer	33
41 Confidential information	34
42 Chief executive officer may issue evidentiary certificates	35
43 Authority must publish certain codes, policies or processes	38
44 Annual business plan	39
45 Authority must not depart significantly from budget without approval	40
Part 3—General	41
46 Regulations	41
Part 4—Savings and transitional provisions	42
47 Definitions	42
48 Transfer of property etc. from superseded Authority to Victorian Planning Authority	42
49 Superseded references	43
50 Transfer of members	43

<i>Section</i>	<i>Page</i>	
51	Transfer of chief executive officer	45
52	Transfer of staff and entitlements	45
53	Report of operations and financial statements	46
54	Annual business plan	47
Part 5—Amendment of the Planning and Environment Act 1987		48
55	Definitions	48
56	Repeal of Part 3AAB	48
57	Infrastructure contributions plan	48
58	Responsibilities of development agencies	48
59	Development contributions plan	49
60	Responsibilities of development agencies	49
61	Powers of responsible authority	49
62	Minister may delegate some powers	49
63	Secretary may delegate powers to employees	50
64	Planning authorities and responsible authorities may delegate powers	50
65	New section 188A inserted	51
66	Minister may delegate administration of planning schemes	53
67	Definitions—Division 1 of Part 9B	53
68	New section 201RAA inserted	54
69	Excluded building work	54
70	Taxation Administration Act 1997	55
71	Amount of GAIC	55
72	Copy of work-in-kind agreement must be given to Commissioner and Victorian Planning Authority	55
73	Amendment of work-in-kind agreement	56
74	Ending of work-in-kind agreement	56
75	Person must notify the Victorian Planning Authority of performance of agreement	56
76	Victorian Planning Authority must determine whether agreement has been performed	56
77	Performance of a work-in-kind agreement taken to be payment of GAIC	57
78	Person may elect to defer payment of GAIC	57
79	Subsequent owner of land in respect of which approval granted liable to pay GAIC	57
80	Minister must give person notice of staged payment approval	57
81	Certificates issued under Subdivision 5 of Division 2 of Part 9B	57
82	Commissioner may seek assistance for issuing certificates	57
83	Exemption from paying GAIC for land dealings involving public authorities and councils	58
84	Governor in Council may grant reduction or exemption of GAIC in exceptional circumstances	58
85	Reduction of GAIC if agreement to provide State infrastructure or funds	58

<i>Section</i>	<i>Page</i>
86 Notice of determination of application	58
87 Board must give notice of determination	58
88 Heading to Division 4 of Part 9B amended	59
89 Victorian Planning Authority to keep record of contribution area	59
90 Access to records and information relating to GAIC	59
91 Victorian Planning Authority to inform Commissioner when precinct structure plan applies to contribution area land	59
92 Victorian Planning Authority may request council to provide information about contribution area land	60
93 Victorian Planning Authority to notify the Registrar of land subject to GAIC	60
94 Application to remove recording on land relating to GAIC	60
95 Registrar not to accept transfer unless accompanied by notice or application from Commissioner or Victorian Planning Authority	60
96 Department and Victorian Planning Authority to report on GAIC and growth area funds	61
97 New section 223 inserted	61
98 Repeal of amending Part	64
Part 6—Amendment of other Acts	65
Division 1—Amendment of the Subdivision Act 1988	65
99 When can the Registrar register a plan?	65
100 New section 49 inserted	65
Division 2—Amendment of the Taxation Administration Act 1997	65
101 Permitted disclosures to particular persons or for particular purposes	65
102 Objections concerning assessments of growth areas infrastructure contributions	66
Division 3—Amendment of the Transport Integration Act 2010	66
103 Definitions—Transport Integration Act 2010	66
104 Repeal of amending Part	66
<hr style="border-top: 3px double #000;"/>	
Endnotes	67
1 General information	67
2 Table of Amendments	69
3 Amendments Not in Operation	70
4 Explanatory details	71

Authorised Version No. 003
Victorian Planning Authority Act 2017

No. 11 of 2017

Authorised Version incorporating amendments as at
30 May 2018

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to establish the Victorian Planning Authority; and
- (b) to amend the **Planning and Environment Act 1987** to abolish the Growth Areas Authority; and
- (c) to make consequential and other amendments to other Acts.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2017, it comes into operation on that day.

3 Definitions

- (1) In this Act—

Authority means the Victorian Planning Authority established under section 4;

board means the board of directors of the Authority;

chief executive officer means the chief executive officer of the Authority appointed under section 21;

committee means a committee established by the board under section 38;

consultant means a lawyer, an engineer, an architect, a town planner, an urban designer or other professional adviser engaged by the Authority to assist with the carrying out of its objects, functions, powers and duties;

Council has the same meaning as in the **Local Government Act 1989**;

declared area has the same meaning as in the **Planning and Environment Act 1987**;

Department has the same meaning as in the **Public Administration Act 2004**;

designated area means an area of land designated under section 37;

domestic partner, of a person, means—

- (a) a person who is in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

interface body has the same meaning as in the **Transport Integration Act 2010**;

objectives of planning in Victoria means the objectives of planning in Victoria set out in section 4(1) of the **Planning and Environment Act 1987**;

S. 3(1) def. of
declared area
inserted by
No. 17/2018
s. 28.

planning authority means a planning authority under the **Planning and Environment Act 1987**;

public sector body has the same meaning as in the **Public Administration Act 2004**;

public service body has the same meaning as in the **Public Administration Act 2004**;

public statutory authority means a body established by or under an Act for a public purpose;

referral authority has the same meaning as in the **Planning and Environment Act 1987**;

relevant person means—

- (a) a director of the Authority; or
- (b) the chief executive officer; or
- (c) a member of a committee; or
- (d) an employee of the Authority; or
- (e) a seconded staff member; or
- (f) a consultant;

responsible authority means a responsible authority under the **Planning and Environment Act 1987**;

seconded staff member means a member of staff of a public sector body who provides services to the Authority under an agreement or arrangement referred to in section 23(2);

Statement of Planning Policy has the same meaning as in the **Planning and Environment Act 1987**;

S. 3(1) def. of
*Statement of
Planning
Policy*
inserted by
No. 17/2018
s. 28.

S. 3(1) def. of *superseded Authority* amended by No. 49/2017 s. 91(1).

superseded Authority means the Growth Areas Authority established by section 46AQ of the **Planning and Environment Act 1987** as in force from time to time before the day on which section 56 came into operation;

S. 3(1) def. of *Yarra protection principles* inserted by No. 49/2017 s. 91(2).

Yarra protection principles has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**;

S. 3(1) def. of *Yarra River land* inserted by No. 49/2017 s. 91(2).

Yarra River land has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**;

S. 3(1) def. of *Yarra Strategic Plan* inserted by No. 49/2017 s. 91(2).

Yarra Strategic Plan has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**;

S. 3(1) def. of *Yarra Strategic Plan area* inserted by No. 49/2017 s. 91(2).

Yarra Strategic Plan area has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**.

- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any

Victorian Planning Authority Act 2017
No. 11 of 2017
Part 1—Preliminary

one or more of the matters referred to in
section 35(2) of the **Relationships Act 2008**
as may be relevant in a particular case.

Part 2—Victorian Planning Authority

Division 1—Establishment, functions and powers

4 Establishment

- (1) The Victorian Planning Authority is established.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of personal property; and
 - (e) may take land on lease and grant sub-leases of leased land; and
 - (f) may do and suffer all acts and things that a body corporate may by law do and suffer.

5 Official seal

- (1) The official seal of the Authority must—
 - (a) be kept in such custody as the Authority directs; and
 - (b) not be used except as authorised by the Authority.
- (2) All courts must take judicial notice of the official seal of the Authority affixed to any document and, until the contrary is proved, presume that it was duly affixed.

6 Authority represents the Crown

In performing its functions and exercising its powers, the Authority represents the Crown.

7 Objects

- (1) The primary object of the Authority is to provide advice and assistance that is in accordance with the objectives of planning in Victoria.
- (2) Without limiting subsection (1), the primary object includes collaborating with government agencies (including public sector bodies) and Councils—
 - (a) to promote the objectives of planning in Victoria; and
 - (b) to support productivity, liveability, housing affordability and environmental quality for Victorian communities; and
 - (c) for facilitation of timely and coordinated delivery of infrastructure and services; and
 - (d) to promote the alignment of decisions made by government about infrastructure with land use planning; and
 - (e) to promote the supply of housing; and
 - (f) to encourage land development that is sustainable and that takes into account natural and other hazards.

8 Functions

- (1) For the purposes of achieving its objects, the Authority has the following functions—
 - (a) to provide the Minister with advice and assistance in relation to planning the use, development and protection of land in Victoria;

- (b) subject to subsection (3), to provide Councils and public sector bodies with advice and assistance in relation to planning the use, development and protection of land in Victoria;
 - (c) to perform any other functions conferred on it under this Act, the **Planning and Environment Act 1987** or any other enactment.
- (2) The Authority also has the following functions in relation to designated areas for the purposes of achieving its objects—
- (a) to undertake integrated land use and infrastructure planning in those areas;
 - (b) to coordinate State Government action in relation to planning the use, development and protection of land in those areas.
- (3) The Authority must not give advice or provide assistance under subsection (1)(b) unless the Minister, or a person authorised by the Minister, has approved the giving of advice or the provision of assistance in a specified case or class of cases.

Note

The Authority is also an *interface body* within the meaning of the **Transport Integration Act 2010**.

9 Powers

- (1) The Authority has power to do all things that are necessary or convenient to be done for or in connection with the achievement of its objects and the performance of its functions.
- (2) Without limiting subsection (1), the Authority may—
 - (a) enter into any agreements, contracts or arrangements in connection with its objects, functions or powers; and

- (b) exercise the powers conferred on the Authority by this Act or any other enactment.

Notes

- 1 The Authority has functions and powers under the **Planning and Environment Act 1987**.
- 2 The Authority does not have power to purchase, hold or dispose of land when acting as a responsible authority—see section 171(2A) of the **Planning and Environment Act 1987**.

10 Performance of functions and exercise of powers in accordance with planning and Government economic and social objectives

- (1) The Authority must perform its functions and exercise its powers under this Act in accordance with—
 - (a) the objectives of planning in Victoria; and
 - (b) any economic and social objectives established from time to time by the State Government.
- (2) In performing its functions and exercising its powers, the Authority must—
 - (a) engage, consult and collaborate with other planning entities, including Councils, in relation to their functions as planning authorities and responsible authorities; and
 - (b) have regard to the whole of the functions conferred on Councils, planning authorities and responsible authorities by the **Planning and Environment Act 1987**; and

- (c) have regard to the functions of public sector bodies, including public sector bodies that have responsibility for the planning and delivery of infrastructure and related services; and

Example

The Authority, in performing its functions and exercising its powers, must have regard to the functions of agencies under the **Transport Integration Act 2010**.

- (d) seek to achieve State Government policy objectives through coordination between all levels of government, government agencies (including public sector bodies) and with the private sector.
- (3) The Authority must have regard to its current annual business plan under section 44 in performing its functions.
- (4) The Authority is subject to the general direction and control of the Minister.

Note

The Minister may give written directions to the Authority under section 36 regarding the performance of its functions or the exercise of its powers.

S. 10A
inserted by
No. 49/2017
s. 92.

10A Obligations of Authority in relation to Yarra River land

- (1) The Authority—
- (a) must not act inconsistently with any part of a Yarra Strategic Plan that is expressed to be binding on the Authority when performing a function or duty or exercising a power under this Act in relation to Yarra River land; and

(b) must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on the Authority, when performing a function or duty or exercising a power under this Act in relation to the Yarra Strategic Plan area that may affect Yarra River land.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by the Authority in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

10B Obligations of Authority in relation to declared areas

S. 10B
inserted by
No. 17/2018
s. 29.

(1) The Authority, when performing a function or duty or exercising a power under this Act in relation to a declared area—

(a) must not act inconsistently with any part of a Statement of Planning Policy that is expressed to be binding on the Authority; and

(b) must have regard to those parts of the Statement of Planning Policy not expressed to be binding on the Authority; and

(c) must have regard to the principles set out in section 46AZL of the **Planning and Environment Act 1987**.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by the Authority in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

Division 2—Board of the Victorian Planning Authority

11 Board of directors

- (1) The Authority must have a board of directors.
- (2) The board—
 - (a) is responsible for determining the general policies and strategic direction of the Authority for the purpose of achieving its objects; and
 - (b) may exercise the powers of the Authority.

12 Constitution of the board

- (1) The board consists of—
 - (a) a chairperson; and
 - (b) a deputy chairperson; and
 - (c) not less than 3, and not more than 5, other directors.
- (2) One of the chairperson, deputy chairperson or other directors must have, in the opinion of the Minister, substantial experience or knowledge of local government.

13 Appointment of directors

- (1) The directors of the Authority must be appointed by the Governor in Council on the recommendation of the Minister.
- (2) When recommending persons to be directors, the Minister must have regard to the need for directors to have experience, skills or knowledge of any one or more of the following fields—
 - (a) planning, including strategic land use planning in metropolitan or regional areas;
 - (b) infrastructure planning, delivery, policy and strategy;

- (c) public administration and public policy;
 - (d) development;
 - (e) housing supply;
 - (f) corporate or public sector governance;
 - (g) economics;
 - (h) finance or financial management;
 - (i) management of business or commercial ventures;
 - (j) local government.
- (3) A director must be appointed—
- (a) on a full-time or part-time basis; and
 - (b) for the period, not exceeding 4 years, specified in the instrument of appointment; and
 - (c) on the terms and conditions (including remuneration and allowances) specified in the instrument of appointment.
- (4) A director is eligible to be reappointed.

14 Chairperson and deputy chairperson

The Minister must appoint—

- (a) one of the directors of the Authority to be the chairperson of the board; and
- (b) one of the directors of the Authority to be the deputy chairperson of the board.

15 Acting appointments

- (1) The Minister may appoint a director of the Authority to act as chairperson—
- (a) if the office of chairperson is vacant; or
 - (b) during any period when the chairperson is absent; or

- (c) if the chairperson is, for any other reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office.
- (2) While a director of the Authority is acting as chairperson, the director—
 - (a) has and may exercise all the powers, and must perform all the functions and duties of, the chairperson; and
 - (b) is entitled to be paid the remuneration and allowances to which the chairperson would have been entitled.
- (3) The Minister may appoint a director of the Authority to act as deputy chairperson—
 - (a) if the office of deputy chairperson is vacant; or
 - (b) during any period when the deputy chairperson is absent; or
 - (c) during any period when the deputy chairperson is acting as chairperson; or
 - (d) if the deputy chairperson is, for any other reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office.
- (4) While a director of the Authority is acting as deputy chairperson, the director—
 - (a) has and may exercise all the powers, and must perform all the functions and duties of, the deputy chairperson; and
 - (b) is entitled to be paid the remuneration and allowances to which the deputy chairperson would have been entitled.

- (5) The Minister may appoint a person to act as a director (other than the chairperson or deputy chairperson) of the Authority—
- (a) during a vacancy in the office of a director;
or
 - (b) during any period when a director is absent;
or
 - (c) during any period when a director is acting as chairperson or deputy chairperson; or
 - (d) if a director is, for any other reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office.
- (6) While a person is acting as a director of the Authority, the person—
- (a) has and may exercise all the powers, and must perform all the functions and duties of, a director; and
 - (b) is entitled to be paid the remuneration and allowances to which a director would have been entitled.

16 Vacancies, resignations, removal from office

- (1) The office of a director of the Authority becomes vacant if the director—
- (a) without the approval of the board, fails to attend 3 consecutive meetings of the board;
or
 - (b) becomes insolvent under administration; or
 - (c) is found guilty in Victoria of an indictable offence or elsewhere of an offence that, if committed in Victoria, would be an indictable offence.

- (2) A director of the Authority may resign by notice in writing delivered to the Governor in Council.
- (3) The Governor in Council, on the recommendation of the Minister, may remove a director of the Authority from office on any of the following grounds—
 - (a) misconduct;
 - (b) neglect of duty;
 - (c) inability to perform the duties of the office;
 - (d) any other ground on which the Governor in Council is satisfied that the director should not hold office.
- (4) The Minister must recommend that a director of the Authority be removed from office if the director is found guilty of an offence (other than an indictable offence) relating to the director's duties as a director.

17 Validity of acts or decisions

- (1) An act or decision of the board is not invalid merely because of—
 - (a) a vacancy in its membership, including a vacancy arising from the failure to appoint a director; or
 - (b) a defect or irregularity in, or in connection with, the appointment of a director.
- (2) Anything done by or in relation to a person purporting to act as a director of the Authority is not invalid merely because—
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in, or in connection with, the appointment; or

- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had ceased.

18 Proceedings of the board

- (1) A meeting of the board must be presided over by—
 - (a) the chairperson; or
 - (b) in the absence of the chairperson, the deputy chairperson; or
 - (c) in the absence of both the chairperson and the deputy chairperson, a director elected by the directors present at the meeting.
- (2) A majority of the directors of the board for the time being constitutes a quorum.
- (3) A question arising at a meeting of the board is determined by a majority of votes.
- (4) The person presiding at a meeting of the board must ensure that accurate minutes are kept of the meeting.
- (5) The person presiding at a meeting of the board has—
 - (a) a deliberative vote; and
 - (b) in the case of an equality of votes, a second or casting vote.
- (6) The board may permit directors to participate in a particular meeting, or all meetings, by means of communication that does not require the physical presence of each director in the same place.
- (7) Subject to this Act, the board may otherwise regulate its own procedure.

19 Resolutions without meetings

- (1) If a majority of the directors of the board (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held—
 - (a) on the day on which the document is signed; or
 - (b) if the directors do not sign the document on the same day, on the day on which the last director to sign signs the document.
- (2) If a resolution is taken under subsection (1) to have been passed at a meeting of the board, each director must be—
 - (a) advised as soon as practicable; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, are taken to constitute one document.

20 Indemnity

The powers of the Authority do not include a power to exempt, whether directly or indirectly, a director of the Authority from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a director of the Authority against, any liability that by law would otherwise attach to the director in respect of a wilful breach of duty or breach of trust of which the director may be guilty in relation to the Authority.

Division 3—Chief executive officer and staff of the Authority

21 Appointment of chief executive officer

- (1) The board, with the approval of the Minister, may appoint a person as chief executive officer of the Authority.
- (2) The chief executive officer is responsible for the management of the affairs of the Authority in accordance with—
 - (a) the general policies and strategic direction determined by the board; and
 - (b) the requirements of this Act and any other enactment.
- (3) The chief executive officer must satisfy the board that funds are spent, staff are carrying out functions and the Authority is generally managed and administered in accordance with—
 - (a) the general policies and strategic direction determined by the board; and
 - (b) the requirements of this Act and any other enactment.
- (4) The chief executive officer is—
 - (a) appointed on a full-time or part-time basis; and
 - (b) appointed for the period, not exceeding 5 years, specified in the instrument of appointment; and
 - (c) appointed on the terms and conditions (including remuneration and allowances) specified in the instrument of appointment; and
 - (d) eligible to be reappointed.

- (5) The chief executive officer may resign by notice in writing delivered to the chairperson of the board.
- (6) The board, with the approval of the Minister, may remove the chief executive officer from office.
- (7) The chief executive officer must not be a director of the board.

22 Appointment of acting chief executive officer

- (1) If the chief executive officer is unable, whether because of illness, suspension, absence or otherwise, to perform the duties of chief executive officer, the board may appoint another person to act in the place of the chief executive officer during the period of the inability.
- (2) While a person is acting as chief executive officer, the person—
 - (a) has and may exercise all the powers, and must perform all the functions and duties, of the chief executive officer; and
 - (b) is to be paid any remuneration and travelling or other allowances fixed by the board from time to time having regard to the rate of remuneration and allowances for the time being payable to the chief executive officer.
- (3) The board, by instrument, may delegate to the chairperson of the board its power to appoint a person to act in the place of the chief executive officer under subsection (1).

23 Employees and other staff

- (1) The Authority may employ any persons for the purposes of carrying out its objects, functions, powers and duties.

- (2) The Authority may enter into agreements or arrangements for the use of the services of any staff of a public sector body.
- (3) The Authority, in employing persons under this section, does not represent the Crown.

24 Consultants and contractors

The Authority may engage persons with suitable qualifications and experience as consultants or contractors to assist with the carrying out of its objects, functions, powers and duties.

Division 4—Conflicts of interest

Subdivision 1—Interpretation

25 Definitions

In this Division—

family member of a person means—

- (a) the person's spouse or domestic partner; or
- (b) a parent or step-parent of the person, or a parent or step-parent of the person's spouse or domestic partner; or
- (c) a grandparent of the person, or a grandparent of the person's spouse or domestic partner; or
- (d) a sibling or step-sibling of the person, or a sibling or step-sibling of the person's spouse or domestic partner; or
- (e) a child or step-child of the person, or a child or step-child of the person's spouse or domestic partner; or
- (f) a grandchild of the person, or a grandchild of the person's spouse or domestic partner; or

- (g) any other relative of the person who resides in the person's household; or
- (h) the spouse or domestic partner of—
 - (i) a parent or step-parent referred to in paragraph (b); or
 - (ii) a grandparent referred to in paragraph (c); or
 - (iii) a sibling or step-sibling referred to in paragraph (d); or
 - (iv) a child or step-child referred to in paragraph (e); or
 - (v) a grandchild referred to in paragraph (f); or
 - (vi) a relative referred to in paragraph (g);

general conflict of interest—see section 26;

specific conflict of interest—see section 27.

26 Meaning of *general conflict of interest*

A person has a *general conflict of interest* in a matter if the person could reasonably be taken, from the perspective of an impartial, fair-minded person, to have a conflict of interest in the matter.

27 Meaning of *specific conflict of interest*

- (1) A person has a *specific conflict of interest* in a matter if any of the following persons would gain a benefit or suffer a loss (whether directly or indirectly and whether of a financial or non-financial nature) depending on the outcome of the consideration of the matter—
 - (a) the person;
 - (b) a family member of the person;

- (c) a body corporate of which the person, or the person's spouse or domestic partner, is a director or member of the governing body;
 - (d) a partner in a partnership of which the person is a partner;
 - (e) an employer (other than a public sector body) of the person;
 - (f) a person for whom the person acts as a consultant, contractor or agent;
 - (g) a beneficiary under a trust or an object of a discretionary trust of which the person is a trustee;
 - (h) a member of a prescribed class of persons.
- (2) A person (*first person*) also has a *specific conflict of interest* in a matter if the first person has received one or more gifts with a total value of, or more than, the threshold amount, from any of the following persons in the 5 years preceding the consideration of the matter—
- (a) a person who would gain a benefit or suffer a loss, whether directly or indirectly and whether of a financial or non-financial nature (a *relevant interest*), depending on the outcome of the consideration of the matter;
 - (b) a director, consultant, contractor or agent (or the director's, consultant's, contractor's or agent's employees) of a person that the first person knows has a relevant interest in the matter;
 - (c) a person who gives the gift to the first person on behalf of a person who has a relevant interest in the matter.
- (3) For the purposes of subsection (2), the threshold amount is \$500 or a higher prescribed amount.

28 Circumstances in which a person does not have a conflict of interest

For the purposes of this Division, a person does not have a specific conflict of interest or general conflict of interest in a matter in the following circumstances—

- (a) the person—
 - (i) does not know the circumstances that give rise to the conflict of interest; and
 - (ii) would not reasonably be expected to know the circumstances that give rise to the conflict of interest;
- (b) the conflict of interest is so remote or insignificant that it could not reasonably be regarded as capable of influencing any actions or decisions of the person in relation to the matter;
- (c) the conflict of interest only arises because of an interest held by the person or another person—
 - (i) in common as a resident, ratepayer, taxpayer or voter and does not exceed the interests generally held by other residents, ratepayers, taxpayers or voters; or
 - (ii) in common with another large class of persons and does not exceed the interests generally held by members of the class of persons;
- (d) the conflict of interest only arises because the person, or a family member of the person, is a member of a religious group;
- (e) the conflict of interest only arises because the person, or a family member of the person, is a member (other than an office

holder) of a community group, sporting club or similar organisation;

- (f) the conflict of interest only arises because the person—
- (i) holds the interest in a prescribed circumstance; or
 - (ii) is a member of a prescribed organisation or group, or is a member of an organisation or group that is a prescribed class of organisation or group.

Subdivision 2—Managing conflicts of interest

29 Board meetings

- (1) A director of the Authority who has a specific conflict of interest or general conflict of interest in a matter to be considered by the board at a meeting and who is attending the meeting must disclose that conflict of interest by advising the board at the meeting of the nature of the conflict of interest before the matter is to be considered.

Penalty: 120 penalty units.

- (2) A director of the Authority who has disclosed a specific conflict of interest or general conflict of interest in accordance with subsection (1)—
- (a) must not take any further part in consideration of the matter; and
 - (b) must not vote on any decision of the board in relation to the matter.

Penalty: 120 penalty units.

- (3) A director of the Authority who has disclosed a specific conflict of interest or general conflict of interest under subsection (1) must leave the room while the matter is being considered.

- (4) If a director of the Authority who has a specific conflict of interest or general conflict of interest in a matter votes or purports to vote on any decision of the board in relation to the matter, the director's vote must be disallowed.
- (5) If a director of the Authority discloses a specific conflict of interest or general conflict of interest in accordance with subsection (1), the person chairing the meeting must ensure the following details are recorded in the minutes of the meeting—
 - (a) the director's name;
 - (b) the nature of the conflict of interest, as described by the director;
 - (c) which directors voted on the matter that gave rise to the conflict of interest.
- (6) If a person discloses a specific conflict of interest or general conflict of interest to the board in accordance with section 31(5), the person chairing the meeting must ensure the following details are recorded in the minutes of the meeting—
 - (a) the name of the person who made the disclosure;
 - (b) the nature of the conflict of interest, as described by the person who made the disclosure.

Note

See also Part 5 of the **Public Administration Act 2004**.

30 Board resolutions without meetings

- (1) A director of the Authority who has a specific conflict of interest or general conflict of interest in a matter to be decided by resolution under section 19 must disclose that conflict of interest by advising, in writing, the chief executive officer

of the nature of the conflict of interest as soon as possible after receiving a copy of a document containing the proposed resolution.

Penalty: 120 penalty units.

- (2) A director of the Authority who has disclosed, in accordance with subsection (1), a specific conflict of interest or general conflict of interest in a matter to be decided by resolution under section 19 must not sign a document containing a statement that the director is in favour of the resolution.

Penalty: 120 penalty units.

- (3) If a director of the Authority discloses a specific conflict of interest or general conflict of interest in accordance with subsection (1)—
- (a) the chief executive officer must report the disclosure to the board by no later than the next ordinary meeting of the board; and
 - (b) at the meeting, the person chairing the meeting must ensure the following details are recorded in the minutes of that meeting—
 - (i) the director's name;
 - (ii) the nature of the conflict of interest, as described by the director;
 - (iii) which directors signed a document containing a statement in favour of a resolution on the matter that gave rise to the conflict of interest.

Note

See also Part 5 of the **Public Administration Act 2004**.

31 Delegates and agents

- (1) A person who has a specific conflict of interest or general conflict of interest in a matter and who has been delegated a function, duty or power of the Authority or the chief executive officer under this Act or under any other enactment must not perform the function or duty or exercise the power in relation to the matter.

Penalty: 120 penalty units.

- (2) A person authorised to act for and on behalf of the Authority in relation to a matter must not act in relation to the matter if the person has a specific conflict of interest or general conflict of interest in the matter.

Penalty: 120 penalty units.

- (3) A person who has a specific conflict of interest or general conflict of interest in a matter in respect of which the person has a delegated function, duty or power of the Authority or the chief executive officer under this Act or under any other enactment, must disclose the conflict of interest in accordance with subsection (5).

Penalty: 120 penalty units.

- (4) A person authorised to act for and on behalf of the Authority in relation to a matter, and who has a specific conflict of interest or general conflict of interest in the matter, must disclose the conflict of interest in accordance with subsection (5).

Penalty: 120 penalty units.

- (5) A person must disclose the nature of the conflict of interest in writing—

- (a) if the person is a director (other than the chairperson of the board) or the chief executive officer—

- (i) to the chairperson of the board as soon as the director or chief executive officer becomes aware of the conflict of interest in the matter; and
 - (ii) to the board by no later than the next ordinary meeting of the board; or
 - (b) if the person is the chairperson of the board—
 - (i) to the chief executive officer as soon as the chairperson becomes aware of the conflict of interest in the matter; and
 - (ii) to the board by no later than the next ordinary meeting of the board; or
 - (c) in any other case, to the chief executive officer as soon as the person becomes aware of the conflict of interest in the matter.
- (6) Subsections (1) to (4) and (5)(a) do not apply to the chief executive officer if the chief executive officer has a specific conflict of interest or general conflict of interest in a matter and the matter only relates to—
- (a) the adoption or amendment of a policy relating to the Authority's staff generally; or
 - (b) a decision to delegate a function, duty or power to an employee of the Authority or a seconded staff member.
- (7) The chief executive officer must keep a record of conflicts of interest disclosed to the chief executive officer under this section.
- (8) A reference in this section to a person who has been delegated a function, duty or power includes a person who has been sub-delegated a function, duty or power.

32 Advisors

- (1) A relevant person who is providing advice or a report to a person or body specified in subsection (2) and who has a specific conflict of interest or general conflict of interest in a matter to which the advice or report relates, must disclose the nature of the conflict of interest to that person or body before the person or body considers that advice.

Penalty: 120 penalty units.

- (2) For the purposes of subsection (1), the following persons and bodies are specified—
- (a) the board;
 - (b) a committee;
 - (c) a person who has been delegated a function, duty or power of the Authority under this Act or under any other enactment.
- (3) A reference in this section to a person who has been delegated a function, duty or power includes a person who has been sub-delegated a function, duty or power.

Division 5—Miscellaneous

33 Power to request information or assistance

- (1) For the purposes of performing its functions, the Authority, by written notice, may request any of the following entities to provide the information or assistance specified in the notice—
- (a) a Council;
 - (b) a planning authority;
 - (c) a responsible authority;
 - (d) a referral authority;

- (e) an advisory committee established under section 151 of the **Planning and Environment Act 1987**;
 - (f) an interface body;
 - (g) any other public statutory authority.
- (2) An entity must comply with a request under subsection (1).
 - (3) The Authority must not request personal information under subsection (1) other than the name and address of an owner of land.
 - (4) The Authority must not use personal information other than to notify, or consult with, landholders in a particular area for the purposes of performing its functions.
 - (5) The Authority must not make a request under subsection (1) unless the Minister has approved the request in a specified case or class of cases.

34 Duty to consult

- (1) In performing its functions and exercising its powers under this Act, the Authority must—
 - (a) if a matter is likely to affect a Council's functions as a planning authority or responsible authority, consult with the Council; and
 - (b) if a matter is likely to significantly affect the functions of any other planning authority, responsible authority or public sector body, consult with the authority or body.
- (2) Any consultation must be conducted in accordance with any directions given by the Minister.

35 Duty to establish systems and procedures to enable cooperation with Councils and other public sector bodies

The Authority must establish systems and procedures for the purpose of enabling the Authority to cooperate with Councils, planning authorities, responsible authorities and other relevant public sector bodies in relation to strategic planning issues.

36 Minister may give directions to Authority

- (1) The Minister may give a written direction to the Authority regarding the performance of its functions and the exercise of its powers under this Act.
- (2) Without limiting subsection (1), the Minister may direct the Authority to provide the Minister with advice on any matter relating to land use planning, land development or the objectives of planning in Victoria.
- (3) The Authority must comply with a written direction of the Minister.
- (4) The Authority must publish a written direction of the Minister in its report of operations.

37 Designated areas

The Minister, by notice published in the Government Gazette, may designate an area of land to be a designated area for the purposes of this Act.

38 Committees

- (1) The Authority may establish a committee to advise the Authority on any matter referred to it by the board.

- (2) A committee must consist of at least one director of the Authority who is to be the chairperson of the committee.
- (3) A meeting of a committee must be presided over by—
 - (a) the chairperson; or
 - (b) in the absence of the chairperson, a member of the committee elected by the members present at the meeting.
- (4) Subject to this Act and any procedures determined by the Authority under subsection (5), a committee may regulate its own procedure.
- (5) The Authority may determine procedures to be followed by a committee.

39 Payment of certain members of committees

- (1) A member of a committee, other than a member who is a public official employed on a full-time basis, is entitled to be paid remuneration and allowances determined by the Minister.
- (2) In this section—

public official has the same meaning as in the **Public Administration Act 2004**.

40 Delegation by the Authority or chief executive officer

- (1) The Authority, by instrument, may delegate to any of the following persons any function, duty or power of the Authority under this Act—
 - (a) the chief executive officer;
 - (b) an employee of the Authority;
 - (c) a seconded staff member.

- (2) The chief executive officer, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a function, duty or power delegated to the chief executive officer under subsection (1) to a person specified in subsection (3) if the instrument of delegation authorises its sub-delegation.
- (3) For the purposes of subsection (2), the following persons are specified—
 - (a) an employee of the Authority;
 - (b) a seconded staff member.
- (4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

41 Confidential information

- (1) A person who is, or has been, a relevant person, a member of the superseded Authority, a chief executive officer of the superseded Authority or a superseded Authority employee, must not disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply to a person referred to in that subsection who discloses information that the person knows is confidential information in the following circumstances—
 - (a) for the purposes of any legal proceedings in relation to this Act or the **Planning and Environment Act 1987**;
 - (b) to a court or tribunal in the course of a legal proceeding;
 - (c) pursuant to an order of a court or tribunal;

- (d) to the extent reasonably required for any other law enforcement purposes;
 - (e) for purposes required by law or by or under an enactment.
- (3) Without limiting section 42, a certificate signed by the chief executive officer stating that information is confidential information, or was confidential information on a stated day or during a stated period, is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that the information is or was confidential information.
- (4) In this section—

confidential information means information that—

- (a) the board or the superseded Authority has determined by resolution to be confidential; or
- (b) the chief executive officer or the chief executive officer of the superseded Authority has designated in writing to be confidential;

superseded Authority employee means a person who was employed to assist the superseded Authority to carry out its functions and achieve its objectives.

42 Chief executive officer may issue evidentiary certificates

- (1) A certificate signed by the chief executive officer stating any of the matters specified in subsection (2) is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

- (2) For the purposes of subsection (1), the following matters are specified—
- (a) on a stated day, the Authority or the superseded Authority made a stated determination or decision;
 - (b) the terms of a determination or decision made by the Authority or the superseded Authority;
 - (c) stated information is information recorded in the minutes of the board, or the minutes of the superseded Authority's board, taken on a stated day;
 - (d) on a stated day, or during a stated period, a person was—
 - (i) a director of the Authority or a member of the superseded Authority; or
 - (ii) the chief executive officer or the chief executive officer of the superseded Authority; or
 - (iii) a member of a committee of the Authority; or
 - (iv) an employee of the Authority or the superseded Authority; or
 - (v) a seconded staff member; or
 - (vi) a consultant or contractor engaged by the Authority or the superseded Authority;
 - (e) on a stated day, a stated person disclosed a specific conflict of interest or general conflict of interest and the nature of the disclosure;

- (f) on a stated day, or during a stated period, a delegation or sub-delegation of a stated function, duty or power by the Authority, the chief executive officer or the superseded Authority to a stated person was in force;
- (g) a stated document is an instrument of delegation or sub-delegation made under—
 - (i) section 22 or 40; or
 - (ii) section 186, 188, 188A or 190 of the **Planning and Environment Act 1987**; or
 - (iii) section 46AZD of the **Planning and Environment Act 1987** as that section was in force from time to time before the commencement day;
- (h) stated information is information kept in connection with the performance of the Authority's or the superseded Authority's functions under Part 9B of the **Planning and Environment Act 1987**;
- (i) on a stated day, stated land is or is not within the contribution area;
- (j) a stated document is a copy of an application made by the Authority or the superseded Authority under section 201UB or 201UC of the **Planning and Environment Act 1987**;
- (k) the status of any matter that relates to the administration of Part 9B of the **Planning and Environment Act 1987** by the Authority or the superseded Authority;
- (l) a stated document is a copy of a document issued by the Authority or the superseded Authority.

(3) In this section—

commencement day means the day on which section 56 comes into operation;

contribution area has the same meaning as in Part 9B of the **Planning and Environment Act 1987**.

43 Authority must publish certain codes, policies or processes

(1) The Authority must publish details of any code of conduct, policy or process that it has put in place under section 81 of the **Public Administration Act 2004** to manage conflicts of interest or duties of directors of the Authority.

Notes

- 1 Section 81 of the **Public Administration Act 2004** requires the board of a public entity to, among other things, ensure that processes are in place to deal with conflicts of interest or duties of directors.
- 2 Division 4 sets out procedures in relation to conflicts of interest.

(2) The Authority must include in its report of operations under Part 7 of the **Financial Management Act 1994** a description of each disclosure of a specific conflict of interest or general conflict of interest made by a director of the Authority in the relevant financial year.

(3) A description under subsection (2) must not contain the following information—

- (a) information relating to the personal affairs of a person other than a director of the Authority;

- (b) information that is confidential information within the meaning of section 41(4).

Example

A director of the Authority discloses a specific conflict of interest to the board under section 29. The annual report for that financial year states the name of the director and that the director disclosed a specific conflict of interest because the director has a family member who owns property the value of which could be affected by a decision of the Authority. The annual report does not contain the name of the director's family member or identifying details about the family member's property.

44 Annual business plan

- (1) The Authority must submit to the Minister for approval, on or before 31 May in each year, a draft business plan that sets out—
 - (a) its objectives and priorities for the next 4 financial years; and
 - (b) financial projections for the next 4 financial years; and
 - (c) its budget for the next financial year; and
 - (d) what it intends to do over the next financial year; and
 - (e) any other matters that the Minister requires in writing.
- (2) After amending its draft business plan in any way required by the Minister, the Authority must submit a final business plan to the Minister for approval on or before the date required by the Minister.

- (3) The Authority must ensure that a copy of its current business plan is—
- (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
 - (b) published on the Internet.

45 Authority must not depart significantly from budget without approval

The Authority must not depart significantly from the budget set out in its current business plan under section 44 without first obtaining the approval of the Minister.

Part 3—General

46 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter required or permitted by this Act to be prescribed or necessary or convenient to be prescribed to give effect to this Act.
- (2) Regulations made under this section may—
 - (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstance.

Part 4—Savings and transitional provisions

47 Definitions

In this Part—

commencement day means the day on which section 56 comes into operation;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective.

48 Transfer of property etc. from superseded Authority to Victorian Planning Authority

On the commencement day—

- (a) the superseded Authority is abolished and its members go out of office; and
- (b) the Authority is the successor in law of the superseded Authority; and
- (c) all rights, property and liabilities of the superseded Authority immediately before its abolition become rights, property and liabilities of the Authority; and
- (d) the Authority is substituted as a party in any proceeding, agreement or arrangement commenced or made by or against or in relation to the superseded Authority; and

- (e) the Authority may continue and complete any other continuing matter or thing commenced or against or in relation to the superseded Authority.

49 Superseded references

A reference in any Act (other than this Act or the **Planning and Environment Act 1987**), subordinate instrument (including any planning scheme), agreement, deed or other document to the superseded Authority (by whatever name described) must be construed as a reference to the Authority—

- (a) so far as the reference relates to any period on or after the commencement day; and
- (b) if not inconsistent with the subject matter.

50 Transfer of members

- (1) A person who, immediately before the commencement day, was a member of the superseded Authority under section 46AV of the **Planning and Environment Act 1987** (other than the chairperson or deputy chairperson of the superseded Authority) is taken on and after that day to be a director of the Authority appointed—
 - (a) on the same terms and conditions on which the person held office as that member, unless those terms or conditions are varied; and
 - (b) until the date on which the person's term as that member would have otherwise expired, unless—
 - (i) the person resigns from office; or
 - (ii) the person's office becomes vacant under section 16; or
 - (iii) the person is removed from office under section 16.

- (2) A person who, immediately before the commencement day, was the chairperson and member of the superseded Authority under section 46AW of the **Planning and Environment Act 1987** is taken on and after that day to be the chairperson and director of the Authority appointed—
- (a) on the same terms and conditions on which the person held office as the chairperson and member, unless those terms and conditions are varied; and
 - (b) until the date on which the person's term as the chairperson and member would have otherwise expired, unless—
 - (i) the person resigns from office; or
 - (ii) the person's office becomes vacant under section 16; or
 - (iii) the person is removed from office under section 16.
- (3) A person who, immediately before the commencement day, was the deputy chairperson and member of the superseded Authority under section 46AW of the **Planning and Environment Act 1987** is taken on and after that day to be the deputy chairperson and director of the Authority appointed—
- (a) on the same terms and conditions on which the person held office as the deputy chairperson and member, unless those terms and conditions are varied; and
 - (b) until the date on which the person's term as the deputy chairperson and member would have otherwise expired, unless—
 - (i) the person resigns from office; or

- (ii) the person's office becomes vacant under section 16; or
- (iii) the person is removed from office under section 16.

51 Transfer of chief executive officer

The person who, immediately before the commencement day, was the chief executive officer of the superseded Authority under section 46AZB of the **Planning and Environment Act 1987** is taken on and after that day to be the chief executive officer of the Authority appointed—

- (a) on the same terms and conditions on which the person held office as the chief executive officer of the superseded Authority, unless the terms or conditions of the instrument of appointment are varied; and
- (b) until the date on which the person's term as chief executive officer of the superseded Authority would have otherwise expired, unless—
 - (i) the person resigns from office; or
 - (ii) the person is removed from office under section 21.

52 Transfer of staff and entitlements

- (1) On the commencement day, all persons who were employees of the superseded Authority immediately before the commencement day are taken to be employees of the Authority on the same terms and conditions and with the same accrued and accruing entitlements as applied to those persons immediately before the commencement day as employees of the superseded Authority.

- (2) If subsection (1) applies to a person—
 - (a) the service of the person as an employee of the Authority is to be regarded for all purposes as having been continuous with the service of the employee with the superseded Authority; and
 - (b) the person is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the superseded Authority.
- (3) Nothing in this section prevents an employee of the superseded Authority from resigning or being dismissed at any time after the commencement day in accordance with the terms and conditions of the employee's employment.
- (4) If a person who becomes an employee of the Authority under this section was, immediately before the commencement day, an officer within the meaning of the **State Superannuation Act 1988** or a corresponding previous enactment, the person continues, subject to that Act, to be an officer within the meaning of that Act while the person is an employee of the Authority.

53 Report of operations and financial statements

- (1) The Authority must cause to be prepared, in accordance with Part 7 of the **Financial Management Act 1994**, a report of operations of the superseded Authority for the 2016/2017 financial year which includes the information required by section 201VC(2) of the **Planning and Environment Act 1987** if, before the commencement day, the chief executive officer of the superseded Authority has not prepared the report of operations for that financial year.

- (2) The chief executive officer of the Authority must cause to be prepared, in accordance with Part 7 of the **Financial Management Act 1994**, financial statements of the superseded Authority for the 2016/2017 financial year if, before the commencement day, the chief executive officer of the superseded Authority has not prepared the financial statements for that financial year.
- (3) The Authority must submit, in accordance with Part 7 of the **Financial Management Act 1994**, the report of operations for the superseded Authority for the 2016/2017 financial year to the Auditor-General as soon as practicable after it has been prepared, if, before the commencement day, the superseded Authority has not submitted the report of operations for that year.
- (4) The chief executive officer of the Authority must submit, in accordance with Part 7 of the **Financial Management Act 1994**, the financial statements for the superseded Authority for the 2016/2017 financial year to the Auditor-General within 8 weeks after the end of that financial year.

54 Annual business plan

On the commencement day, a business plan prepared under section 46AZE of the **Planning and Environment Act 1987** as it was in force immediately before the commencement day is taken to be the business plan prepared in respect of the Authority, and may be amended in accordance with this Act.

Part 5—Amendment of the Planning and Environment Act 1987

55 Definitions

In section 3(1) of the **Planning and Environment Act 1987**—

(a) **insert** the following definition—

"Victorian Planning Authority means the Victorian Planning Authority established under section 4 of the **Victorian Planning Authority Act 2017**";

(b) in the definition of *growth area*, for "section 46AO" **substitute** "section 201RAA";

(c) the definition of *Growth Areas Authority* is **repealed**.

56 Repeal of Part 3AAB

Part 3AAB of the **Planning and Environment Act 1987** is **repealed**.

57 Infrastructure contributions plan

In section 46GB(1)(b) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

58 Responsibilities of development agencies

In section 46GK(4) of the **Planning and Environment Act 1987**—

(a) for "Growth Areas Authority" (where first occurring) **substitute** "Victorian Planning Authority";

(b) **omit** "Growth Areas" (where secondly occurring).

59 Development contributions plan

In section 46I(1)(b) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

60 Responsibilities of development agencies

In section 46QB(3A) of the **Planning and Environment Act 1987**—

- (a) for "Growth Areas Authority" (where first occurring) **substitute** "Victorian Planning Authority";
- (b) **omit** "Growth Areas" (where secondly occurring).

61 Powers of responsible authority

After section 171(2) of the **Planning and Environment Act 1987** **insert**—

"(2A) Despite subsection (2), the Victorian Planning Authority does not have power to purchase, hold or dispose of land."

62 Minister may delegate some powers

- (1) For section 186(1)(d) and (e) of the **Planning and Environment Act 1987** **substitute**—

"(d) the Victorian Planning Authority."

- (2) In section 186(2) of the **Planning and Environment Act 1987** for ", section 201F or subsection (1)" **substitute** "or section 201F".

- (3) At the foot of section 186(2) of the **Planning and Environment Act 1987** **insert**—

"Note

A power to delegate does not include the power to delegate that power of delegation unless the contrary intention appears (see section 42A(1) of the **Interpretation of Legislation Act 1984**)."

(4) After section 186(2) of the **Planning and Environment Act 1987** insert—

"(3) The Victorian Planning Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to it under subsection (1) to the chief executive officer of the Authority if the instrument of delegation authorises its sub-delegation.

(4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation."

63 Secretary may delegate powers to employees

(1) In section 187 of the **Planning and Environment Act 1987** omit—

"except—

- (a) this power of delegation; and
- (b) any power, discretion or function which the Secretary exercises or performs as a delegate".

(2) At the foot of section 187 of the **Planning and Environment Act 1987** insert—

"**Note**

A power to delegate does not include the power to delegate that power of delegation unless the contrary intention appears (see section 42A(1) of the **Interpretation of Legislation Act 1984**)."

64 Planning authorities and responsible authorities may delegate powers

(1) In section 188(1) of the **Planning and Environment Act 1987**—

- (a) after "Minister" insert "or the Victorian Planning Authority";

(b) for paragraphs (c) and (d) **substitute**—
"(c) the Victorian Planning Authority."

(2) In section 188(2) of the **Planning and Environment Act 1987**—

(a) in paragraph (a) **omit** "and subsection (1)";

(b) in paragraph (b) **omit** "and subsection (1)".

(3) At the foot of section 188(2) of the **Planning and Environment Act 1987** **insert**—

"Note

A power to delegate does not include the power to delegate that power of delegation unless the contrary intention appears (see section 42A(1) of the **Interpretation of Legislation Act 1984**)."

(4) After section 188(3) of the **Planning and Environment Act 1987** **insert**—

"(4) The Victorian Planning Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to it under subsection (1) to the chief executive officer of the Authority if the instrument of delegation authorises its sub-delegation.

(5) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation."

65 New section 188A inserted

After section 188 of the **Planning and Environment Act 1987** **insert**—

"188A Victorian Planning Authority may delegate powers

(1) The Victorian Planning Authority may by instrument delegate any of its powers, discretions or functions under this Act to—

- (a) the chief executive officer of the Authority; or
 - (b) an employee of the Authority; or
 - (c) a seconded staff member within the meaning of the **Victorian Planning Authority Act 2017**.
- (2) Subsection (1) does not apply—
- (a) if the Authority is a planning authority, to the powers of a planning authority under sections 28, 29 and 191; and
 - (b) if the Authority is a responsible authority—
 - (i) to the powers of a responsible authority under sections 125, 171(2)(b), (c), (d) and (e), 172 and 191; and
 - (ii) to the power of a responsible authority to authorise any officer to carry out a duty or function or to exercise a power.
- (3) The chief executive officer of the Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to the chief executive officer under subsection (1) to a person specified in subsection (4) if the instrument of delegation authorises its sub-delegation.
- (4) For the purposes of subsection (3), the following persons are specified—
- (a) an employee of the Authority;
 - (b) a seconded staff member within the meaning of the **Victorian Planning Authority Act 2017**.

- (5) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation."

66 Minister may delegate administration of planning schemes

- (1) For section 190(1)(c) of the **Planning and Environment Act 1987** substitute—

"(c) the Victorian Planning Authority."

- (2) After section 190(1A) of the **Planning and Environment Act 1987** insert—

"(1B) The Victorian Planning Authority, subject to any conditions or limitations to which the delegation is subject, may sub-delegate a power, discretion or function delegated to it under subsection (1) to the chief executive officer of the Authority if the instrument of delegation authorises its sub-delegation.

- (1C) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation."

67 Definitions—Division 1 of Part 9B

In section 201R of the **Planning and Environment Act 1987**—

- (a) the definition of *growth area* is repealed;
(b) for the definition of *Secretary to the Department of Transport, Planning and Local Infrastructure* substitute—

"*Secretary to the Department of Economic Development, Jobs, Transport and Resources* means the Secretary within the meaning of the **Transport Integration Act 2010**;"

68 New section 201RAA inserted

After the heading to Subdivision 2 of Division 1 of Part 9B of the **Planning and Environment Act 1987** insert—

"201RAA Minister may declare growth area

- (1) The Minister, by order published in the Government Gazette, may—
 - (a) declare an area of land in the municipal district of one or more municipal councils specified in subsection (2) to be a growth area; and
 - (b) add land to that declared area; and
 - (c) remove land from that declared area.
- (2) For the purposes of subsection (1), the following municipal councils are specified—
 - (a) Cardinia Shire Council;
 - (b) Casey City Council;
 - (c) Hume City Council;
 - (d) Melton City Council;
 - (e) Mitchell Shire Council;
 - (f) Whittlesea City Council;
 - (g) Wyndham City Council.
- (3) An order under subsection (1) may specify a growth area by reference to a map, description or document."

69 Excluded building work

- (1) In section 201RG(3) of the **Planning and Environment Act 1987**, after "succeeding financial year" insert "until and including the 2017/2018 financial year".

(2) After section 201RG(3) of the **Planning and Environment Act 1987** insert—

- "(4) The Victorian Planning Authority must publish the threshold amount calculated under Part 3 of Schedule 1 for the 2018/2019 financial year and each succeeding financial year before 1 June in the financial year immediately preceding that financial year—
- (a) in the Government Gazette; and
 - (b) on the Victorian Planning Authority's Internet site."

70 Taxation Administration Act 1997

In section 201RH(2) of the **Planning and Environment Act 1987**—

- (a) for "member" **substitute** "director";
- (b) for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

71 Amount of GAIC

In section 201SG(7) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

72 Copy of work-in-kind agreement must be given to Commissioner and Victorian Planning Authority

- (1) In the heading to section 201SLE of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".
- (2) In section 201SLE of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

73 Amendment of work-in-kind agreement

In section 201SLF(2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

74 Ending of work-in-kind agreement

In section 201SLG(2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

75 Person must notify the Victorian Planning Authority of performance of agreement

- (1) In the heading to section 201SLK of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".
- (2) In section 201SLK of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

76 Victorian Planning Authority must determine whether agreement has been performed

- (1) In the heading to section 201SLL of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".
- (2) In section 201SLL(1) and (2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

77 Performance of a work-in-kind agreement taken to be payment of GAIC

In section 201SLM(1)(c) and (2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

78 Person may elect to defer payment of GAIC

In section 201SM(5) of the **Planning and Environment Act 1987**, for "area" substitute "areas".

79 Subsequent owner of land in respect of which approval granted liable to pay GAIC

In section 201SRA(4) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

80 Minister must give person notice of staged payment approval

In section 201SU(2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

81 Certificates issued under Subdivision 5 of Division 2 of Part 9B

In section 201SZE(2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

82 Commissioner may seek assistance for issuing certificates

In section 201SZH of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

83 Exemption from paying GAIC for land dealings involving public authorities and councils

In section 201TC(1)(b) of the **Planning and Environment Act 1987**, for "Secretary to the Department of Transport, Planning and Local Infrastructure" (wherever occurring) **substitute** "Secretary to the Department of Economic Development, Jobs, Transport and Resources".

84 Governor in Council may grant reduction or exemption of GAIC in exceptional circumstances

In section 201TE(6) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

85 Reduction of GAIC if agreement to provide State infrastructure or funds

In section 201TF(6) of the **Planning and Environment Act 1987**, for "Secretary to the Department of Transport, Planning and Local Infrastructure" **substitute** "Secretary to the Department of Economic Development, Jobs, Transport and Resources".

86 Notice of determination of application

In section 201TG(4) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

87 Board must give notice of determination

In section 201TK(7) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

88 Heading to Division 4 of Part 9B amended

In the heading to Division 4 of Part 9B of the **Planning and Environment Act 1987**, for "**Growth Areas Authority**" substitute "**Victorian Planning Authority**".

89 Victorian Planning Authority to keep record of contribution area

- (1) In the heading to section 201U of the **Planning and Environment Act 1987**, for "**Growth Areas Authority**" substitute "**Victorian Planning Authority**".
- (2) In section 201U(1) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

90 Access to records and information relating to GAIC

In section 201UA of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

91 Victorian Planning Authority to inform Commissioner when precinct structure plan applies to contribution area land

- (1) In the heading to section 201UAA of the **Planning and Environment Act 1987**, for "**Growth Areas Authority**" substitute "**Victorian Planning Authority**".
- (2) In section 201UAA of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

92 Victorian Planning Authority may request council to provide information about contribution area land

- (1) In the heading to section 201UAB of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "**Victorian Planning Authority**".
- (2) In section 201UAB(1) and (2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

93 Victorian Planning Authority to notify the Registrar of land subject to GAIC

- (1) In the heading to section 201UB of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "**Victorian Planning Authority**".
- (2) In section 201UB(1) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

94 Application to remove recording on land relating to GAIC

In section 201UC(1) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

95 Registrar not to accept transfer unless accompanied by notice or application from Commissioner or Victorian Planning Authority

- (1) In the heading to section 201UG of the **Planning and Environment Act 1987**, for "Growth Areas Authority" substitute "**Victorian Planning Authority**".

- (2) In section 201UG(2)(b) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

96 Department and Victorian Planning Authority to report on GAIC and growth area funds

- (1) In the heading to section 201VC of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".
- (2) In section 201VC(1)(d) and (2) of the **Planning and Environment Act 1987**, for "Growth Areas Authority" **substitute** "Victorian Planning Authority".

97 New section 223 inserted

At the end of Part 11 of the **Planning and Environment Act 1987** insert—

"223 Transitional provisions—Victorian Planning Authority Act 2017

- (1) A development agency (other than a municipal council) to which an amount of infrastructure levy was paid by the Growth Areas Authority as a collecting agency under Part 3AB, as it was in force from time to time before the commencement day, that did not provide the Growth Areas Authority with reports under section 46GK on the use of the amount, must provide the Victorian Planning Authority with the reports after the commencement day.
- (2) A development agency (other than a municipal council) to which an amount of levy was paid by the Growth Areas Authority as a collecting agency under Part 3B, as it was in force from time to time before the commencement day, that

- did not provide the Growth Areas Authority with reports under section 46QB on the use of the amount, must provide the Victorian Planning Authority with the reports after the commencement day.
- (3) An order published in the Government Gazette by the Minister under section 46AO that is in force immediately before the commencement day is taken on that day to be an order published in the Government Gazette by the Minister under section 201RAA.
- (4) If the Growth Areas Authority received a notification under section 201SLK and made a determination under section 201SLL(1) before the commencement day but did not notify the Commissioner under section 201SLL(2) of the determination before that day, the Victorian Planning Authority must notify the Commissioner of that determination on or after that day.
- (5) If the Growth Areas Authority received a notification under section 201SLK but did not make a determination under section 201SLL(1) before the commencement day, the Victorian Planning Authority—
- (a) must make a determination under section 201SLL(1) in respect of the work-in-kind agreement, or stage of the work-in-kind agreement, to which the notification relates on or after that day; and
 - (b) must notify the Commissioner of that determination on or after that day.

- (6) For the purposes of section 201SLM—
- (a) a determination of the value of land or works made by the Growth Areas Authority under section 201SLL(1) before the commencement day is taken on that day to be a determination made by the Victorian Planning Authority; and
 - (b) a notification given by the Growth Areas Authority under section 201SLL(2) before the commencement day is taken on that day to be a notification given by the Victorian Planning Authority.
- (7) A record kept by the Growth Areas Authority under section 201U as in force from time to time before the commencement day is taken on that day to be a record kept by the Victorian Planning Authority.
- (8) A municipal council that received a request for information from the Growth Areas Authority under section 201UAB(1) as in force from time to time before the commencement day and did not provide the Growth Areas Authority with that information before that day must provide that information to the Victorian Planning Authority as soon as possible on or after that day.
- (9) Section 201UG as in force immediately before the commencement day continues to apply to an instrument of transfer which is accompanied by an application made by the Growth Areas Authority under section 201UC before that day.

(10) The Department must include in its annual report of operations for the 2016/2017 financial year, the value of all work-in-kind agreements (within the meaning of section 201SLC(1)(e)) determined by the Growth Areas Authority under section 201SLL (as in force from time to time before the commencement day) to have been performed or partly performed in respect of each growth area.

(11) In this section—

commencement day means the day on which section 56 of the **Victorian Planning Authority Act 2017** comes into operation;

Growth Areas Authority means the Growth Areas Authority established by section 46AQ as in force immediately before the commencement day."

98 Repeal of amending Part

This Part is **repealed** on 1 December 2018.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Part 6—Amendment of other Acts

Division 1—Amendment of the Subdivision Act 1988

99 When can the Registrar register a plan?

In section 22(1)(g)(ii) of the **Subdivision Act 1988**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

100 New section 49 inserted

After section 48 of the **Subdivision Act 1988** insert—

"49 Transitional—Victorian Planning Authority Act 2017

An application made by the Growth Areas Authority for the purposes of section 22(1)(g)(ii) before the commencement of section 99 of the **Victorian Planning Authority Act 2017** in respect of which the Registrar has not registered a plan before that commencement, is, on and after that day, taken to be an application made by the Victorian Planning Authority."

Division 2—Amendment of the Taxation Administration Act 1997

101 Permitted disclosures to particular persons or for particular purposes

For section 92(1)(e)(ia) of the **Taxation Administration Act 1997** substitute—

"(ia) the Victorian Planning Authority established under the **Victorian Planning Authority Act 2017** for the purposes of administering

Part 9B of the **Planning and Environment Act 1987**; or".

102 Objections concerning assessments of growth areas infrastructure contributions

In section 100B of the **Taxation Administration Act 1997**, for "Growth Areas Authority" substitute "Victorian Planning Authority".

Division 3—Amendment of the Transport Integration Act 2010

103 Definitions—Transport Integration Act 2010

In section 3 of the **Transport Integration Act 2010**, for paragraph (d)(ii) of the definition of *interface body* substitute—

"(ii) the Victorian Planning Authority established under the **Victorian Planning Authority Act 2017**";.

104 Repeal of amending Part

This Part is **repealed** on 1 December 2018.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 7 December 2016

Legislative Council: 22 February 2017

The long title for the Bill for this Act was "A Bill for an Act to establish the Victorian Planning Authority, to amend the **Planning and Environment Act 1987** to abolish the Growth Areas Authority, to make consequential and other amendments to other Acts and for other purposes."

The **Victorian Planning Authority Act 2017** was assented to on 27 March 2017 and came into operation on 1 July 2017: Special Gazette (No. 150) 16 May 2017 page 1.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Victorian Planning Authority Act 2017** by Acts and subordinate instruments.

Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017, No. 49/2017

Assent Date: 26.9.17
Commencement Date: Ss 91, 92 on 1.12.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Victorian Planning Authority Act 2017**

Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018, No. 17/2018

Assent Date: 29.5.18
Commencement Date: Ss 28, 29 on 30.5.18: s. 2
Current State: This information relates only to the provision/s amending the **Victorian Planning Authority Act 2017**

3 Amendments Not in Operation

This publication does not include amendments made to the **Victorian Planning Authority Act 2017** by the following Act/s.

Victorian Planning Authority Act 2017, No. 11/2017

<i>Assent Date:</i>	27.3.17
<i>Commencement Date:</i>	Ss 98, 104 on 1.7.17: Special Gazette (No. 150) 16.5.17 p. 1
<i>Note:</i>	S. 98 repeals Pt 5 (ss 55–98) on 1.12.18; s. 104 repeals Pt 6 (ss 99–104) on 1.12.18
<i>Current State:</i>	This information relates only to the provision/s amending the Victorian Planning Authority Act 2017

At the date of this publication, the following provisions amending the **Victorian Planning Authority Act 2017** were Not in Operation:

Amending Act/s:

Victorian Planning Authority Act 2017, No. 11/2017

98 Repeal of amending Part

This Part is **repealed** on 1 December 2018.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

104 Repeal of amending Part

This Part is **repealed** on 1 December 2018.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

4 Explanatory details

No entries at date of publication.